

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JENNIFER REYES)	
Claimant)	
VS.)	
)	
MAIL & MORE)	Docket No. 234,732
Respondent)	
AND)	
)	
UNITED FIRE AND CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Pamela J. Fuller's preliminary hearing Order for Medical Treatment dated November 20, 1998.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment for her bilateral carpal tunnel syndrome injury. Respondent contends claimant failed to provide respondent with the required timely notice of her accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant was employed by the respondent from October 1997 through her last day worked of June 17, 1998. In January of 1998, claimant testified she first noticed numbness in her hands and was dropping things at work. These problems worsened as she continued to work.

On April 8, 1998, claimant was examined and evaluated by Pedro A. Murati, M.D., at the request of claimant's attorney, for a work-related injury claimant received to her upper back and right shoulder on July 31, 1997, at her previous employer, Wal-Mart. During that examination, Dr. Murati also diagnosed claimant with bilateral carpal tunnel syndrome not related to the Wal-Mart accident. In fact, claimant testified Dr. Murati related the bilateral carpal tunnel syndrome to her work with respondent.

Claimant testified that the day after Dr. Murati's examination she notified the respondent's owner, Roger Settle, that she was having numbness in her hands and Dr. Murati

had attributed the numbness to her work activities with respondent. Claimant also testified she told a co-worker, Kaelin Garten, about her hand problems even before she saw Dr. Murati.

Roger Settle, respondent's owner, testified by deposition. He recalls claimant going to see a physician about her Wal-Mart injury, but he does not recall her telling him her hands were bothering her while working for respondent. Mr. Settle testified he did not know she was making a workers' compensation claim until he received a letter from claimant's attorney about two weeks after she quit work. Claimant quit work for reasons not related to her employment.

Kaelin Garten, an employee of the respondent since November 1997, also testified by deposition. She acknowledged that claimant had told her about her numbness in her hands, but denied claimant told her while Mr. Settle was present.

Respondent argues claimant is not credible and cannot be believed because her testimony is inconsistent and is contradicted by both Mr. Settle and Ms. Garten. Therefore, respondent argues claimant failed to give respondent notice of the accident within the required ten days and claimant has further failed to prove just cause for failure to give the timely notice.

When there is conflicting testimony such as found in this case, the administrative law judge's evaluation of claimant's credibility is significant. By granting claimant's request for medical treatment, the Administrative Law Judge obviously believed claimant when she testified she told Mr. Settle of her hand problems the day after she was examined by Dr. Murati and on other occasions. The Appeals Board finds some deference should be given to the Administrative Law Judge's conclusions due to her having the unique opportunity to assess claimant's credibility. The Appeals Board, therefore, finds that claimant gave respondent timely notice of accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Administrative Law Judge Pamela J. Fuller's November 20, 1998, preliminary Order for Medical Treatment should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
James B. Biggs, Topeka, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director